

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

Jose Reyes-Reyes,	:	Case No. 99-CR-330(PG)
Petitioner,	:	
	:	Civil No. _____
v.	:	
	:	
UNITED STATES OF AMERICA,	:	
Respondant.	:	ss: 28 U.S.C. §1746 Certification

AFFIDAVIT OF JOSE REYES REYES

I, Jose Reyes-Reyes, affiant in the above-captioned civil action, hereby depose and says the following pursuant to 28 U.S.C. §1746 and pursuant to penalty of perjury of the laws of the United States of America:

1. I am the same Jose Reyex-Reyes who was previoulsy named as "defendant" in Criminal Indictment Numbers 99-CR-330(PG) and 01-CR-127(JAG).

2. I was represented by Saul Roman Santiago, Esq., P.O. Box 191736, San Juan, P.R. 00919-1736, for the appeal of the criminal matter.

3. I was represented by Manuel San Juan, Esq., P.O. Box 9023587, San Juan, P.R., 00902-3587 for the plea and sentencing.

4. Prior to the entry of the plea of guilty to both indictments, attorney Manuel San Juan, Esq., advised me that it would be in my best interest to plead guilty, have the indictments consolidated for sentencing purposes, agree to an offense level 30 for the controlled substances, agree to a role adjustment of two levels, and receive acceptance of responsibility for a sentence of 87-108 months.

5. Counsel also advised me that in exchange for my plea of guilty, I would no longer be faced with a life sentence, and would have the remaining counts on the indictments dismissed.

6. Based on counsel's advice, I agreed to enter into a plea agreement with the government.

7. At the sentencing, and upon receipt of the PSI report, counsel informed me that the probation department had included a two-level upward adjustment for possession of a firearm.

8. I asked counsel how could I receive such an adjustment when the plea agreement did not call for it, and the firearms charge(s) were dismissed pursuant to the plea agreement.

9. Counsel advised me that the court could agree with the PSI report even though the charges were dismissed and even though we did not agree to an enhancement for the offense.

10. At the sentencing, counsel did object to the PSI report's recommendation that 2 levels be awarded for the firearms that were dismissed.

11. The district court adopted the PSI reports recommendation and sentenced me to a sentencing range of level 31 (adjusted), 108-135 for a sentence of 120 months.

12. I subsequently requested counsel to file an appeal because upon information and belief I should not have received additional punishment for firearms offenses that were dismissed.

13. Counsel stated that he would advise whoever was filing an appeal for me of my concerns.

14. Subsequently, Saul Roman Santiago, Esq., filed an appeal on my

behalf.

15. Counsel filed an "Anders" brief stating that "Counsel on appeal has reviewed all documents, including the indictments, the plea agreement, the change of plea hearing transcript, the presentence investigation report, the sentencing transcript and the judgment document, finding no defect in the appeal waiver or any jurisdictional defect, or fundamental defect to the plea colloquy as to represent a miscarriage of justice."

16. Counsel further intimated that the plea agreement entered into pursuant to Rule 11(e)(1)(B) permitted the court "to impose the sentence it legally saw fit as the agreement was not binding on the district court."

17. Upon information and belief, appellate counsel knew or should have known that there was a fundamental jurisdictional defect as he was given additional time imprisonment absent an Act of Congress for the fire-arms offenses.

18. Because counsel stated in his own words that he felt as though there was not jurisdictional defect, and the record in this case clearly shows that there was, counsel was therefore ineffective for failing to prosecute on appeal the jurisdictional defect, which resulted in a violation of my right to effective assistance of counsel on direct appeal.

AFFIANT FURTHER SAYETH NOT.

Signed: Jose Reyes Reyes
Jose Reyes-Reyes - Affiant

Date: July 7, 2005